No. 25-5286
(CAPITAL CASE)

IN THE
Supreme Court of the United States

SAMUEL FIELDS, *Petitioner*,
v.
LAURA PLAPPERT, WARDEN, KENTUCKY STATE PENITENTIARY, *Respondent.*

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Sixth Circuit

Brief of National Association of Criminal Defense Lawyers, National Association for Public Defense, Kentucky Association of Criminal Defense Lawyers, and Scholars as *Amici Curiae* in Support of Petitioner

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SEPTEMBER 5, 2025

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INTEREST OF *AMICI CURIAE*[1]

Founded in 1958, the National Association of Criminal Defense Lawyers (NACDL) is a non-profit, voluntary professional bar association that works on behalf of criminal-defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL's thousands of members include private criminal-defense lawyers, public defenders, military defense counsel, law professors, and judges, as well approximately 40,000 affiliates, including the Kentucky association (KACDL). NACDL files numerous amicus briefs each year in this Court and other federal and state courts, seeking to provide assistance in cases of broad importance to criminal defendants, criminal defense lawyers, and the criminal-legal system. Consistent with its mission, NACDL has an important interest in ensuring that habeas law functions as intended—safeguarding the rights of those seeking relief and guaranteeing meaningful access to judicial review—and that no person tried before a jury is punished based on evidence not subjected to the adversarial system's protections.

The National Association for Public Defense (NAPD), which consists of more than 25,000 professionals, includes attorneys, investigators, social workers, administrators, and other support staff who

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[1] Counsel of record for all parties received timely notice of the intention to file this brief. Pursuant to Supreme Court Rule 37, amici state that no counsel for any party authored this brief in whole or in part, and that no entity or person other than amici and their members made any monetary contribution toward the preparation and submission of this brief.

are responsible for executing the constitutional right to effective assistance of counsel in a wide range of criminal matters, including on appeal.

Amici are current and former law professors (listed in Appendix A) who teach and write about habeas corpus, capital punishment, and constitutional law. Amici offer their diverse perspectives and deep knowledge to draw this Court's attention to a certiorari-worthy case and explain what conclusions the Sixth Circuit should have reached under the proper application of this Court's precedent. Amici sign this brief in their individual capacities and not on behalf of their institutions; institutional affiliations are provided solely for identification purposes.

INTRODUCTION AND SUMMARY OF ARGUMENT

Samuel Fields, who has maintained his innocence for more than three decades, was convicted and sentenced to death for the murder of his girlfriend's landlord because—behind the jury room's closed doors—jurors reached their verdict based on an experiment they devised to test the prosecution's central theory of guilt, not evidence developed at trial. *See* (Pet. App. 6a–7a, 40a–41a). This new evidence purported to confirm how Mr. Fields accessed the victim's residence by unscrewing a storm window, but it was neither subjected to our adversarial system's basic procedural safeguards nor the heightened standards demanded in capital cases. *See Kyles v. Whitley*, 514 U.S. 419, 422 (1995) (affirming, in habeas case, "duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case") (citation omitted). Consequently, on

appeal, Mr. Fields challenged the jury's consideration of extrinsic evidence as a violation of his rights to confrontation, due process, and a fair trial, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments, relying on this Court's holdings in a series of decisions that instruct: "In the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Turner v. Louisiana*, 379 U.S. 466, 472–73 (1965); *see* (Pet. App. 15a–17a, 42a). However, a majority of the Sixth Circuit sitting *en banc* reversed a panel's conditional grant for writ of habeas corpus because it concluded that *Turner* and its kin are not "clearly established federal law," thereby revealing a misunderstanding of both this Court's precedent and the required inquiry under Section 2254 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). For these reasons, this Court should grant review and expose the Sixth Circuit's cramped view of habeas relief as an unwarranted curtailment of the Great Writ, even under the restrictions AEDPA places on Article III courts' power to enforce the federal Constitution as the supreme law of the land. *Cf.* Anthony G. Amsterdam & James S. Liebman, Loper Bright *and the Great Writ*, 56 Colum. Human Rights L. Rev. 54, 61 (2025) ("From *Williams* forward, the full Court has never addressed the constitutionality of 'AEDPA deference.'").

Under AEDPA, if a state court "adjudicated" a claim "on the merits," habeas corpus relief is available when the petitioner establishes that the adjudication "resulted in a decision that was contrary to, or

involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). As a practical matter, a court must first determine "what constitutes 'clearly established Federal law,'" then, if there is relevant "clearly established federal law," determine whether the state court decision was "contrary to, or involved an unreasonable application of," that clearly established federal law. *See Lockyer v. Andrade*, 538 U.S. 63, 71 (2003) (citation omitted). The phrase "clearly established federal law" "refers to the holdings" or "governing legal principle or principles" of the Supreme Court "as of the time of the relevant state-court decision." *Id.* at 71–72 (citing *Williams v. Taylor*, 529 U.S. 362, 405, 413 (2000)). *Cf. Smith v. Arizona*, 602 U.S. 779, 794 (2024) ("federal constitutional rights are not typically defined—expanded or contracted—by reference to non-constitutional bodies of law like evidence rules").

In *Turner*, this Court addressed the same "basic question" about the "nature of the jury trial" prescribed by the Fourteenth Amendment as it did in *Irvin v. Dowd*, 366 U.S. 717 (1961), even though *Turner* involved conduct during a trial and *Irvin* involved prejudice "before the actual trial proceedings had commenced." *Turner*, 379 U.S. at 471. *Irvin* was nonetheless "controlling" in *Turner*. *Id.* In both capital cases, this Court relied on a unifying principle tied to the "fundamental integrity" of criminal adjudications: a verdict must be based on "evidence developed at the trial." *Turner*, 379 U.S. at 472; *Irvin*, 366 U.S. at 722. This principle has deep roots in English law and early American trials, *see Irvin*, 366 U.S. at 721–22, and the holdings in both cases relied upon factually distinct

precedent to show that a fair trial which comports with the requirements of due process means, at minimum, evidence of guilt must be present and publicly demonstrated. *E.g.*, *Turner*, 379 U.S. at 472. In holding that verdicts "must be based upon evidence developed at the trial," *Turner* articulated "clearly established federal law."

To qualify for a merits review under AEDPA, the Sixth Circuit required Mr. Fields to point to a specific holding from this Court that defines when "a jury experiment change[s] from a (valid) 'examination of proper evidence' into a (perhaps impermissible) 'production of new evidence[.]'" (Pet. App. 21a). With its artificially narrowed framing, the court whittled away a key constitutional principle established by this Court and misapplied the required inquiry under AEDPA. And, despite this Court's recent and emphatic confirmation that general legal principles can constitute clearly established law under AEDPA, *see Andrew v. White*, 145 S. Ct. 75 (2025) (*per curiam*), a majority of the Sixth Circuit declined to revisit its decision to deny Mr. Fields review. (Pet. App. 1a).

Review is also needed in this case because the Sixth Circuit misunderstands the nature of criminal defendants' constitutionally protected trial rights. Whereas that court faulted Mr. Fields for not "pinpoint[ing] the *specific constitutional right*" and "interchangeably suggest[ing]" that the jury's experiment violated his confrontation, due process, and jury trial rights, (Pet. App. 15a) (emphasis original), this Court has clearly articulated the interrelationship between and among the trial rights Mr. Fields identified. *E.g.*, *Strickland v. Washington*, 466 U.S. 668, 684–85 (1984) ("The Constitution

guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment ….”). Similarly, to support its conclusion that the Confrontation Clause was not implicated by the jury’s experiment, the Sixth Circuit asked, “Indeed ‘how could one cross-examine [a cabinet]?’” (Pet App. 16a). Yet that very framing elides the ways in which the jury’s experiment with extrinsic evidence contravened a constellation of Mr. Fields’ trial rights: if the prosecution had offered a similar experiment into evidence as expert or opinion testimony, Mr. Fields’ counsel could have cross-examined the person who conducted the test about all the ways in which the circumstances (and screws)[2] differed. *See Crawford v. Washington*, 541 U.S. 36, 42 (2004) (noting English law reformed confrontation rights after Sir Walter Raleigh sentenced to death following use of *ex parte* examinations); *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 319 (2009) (noting “invalid forensic testimony contributed to the convictions in 60%” of exoneration cases).

This Court should grant review—or summarily vacate and remand—because the Sixth Circuit’s decision conflicts with “clearly established” law articulated in *Turner* and demanded an improperly strict standard under AEDPA that conflicts with

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[2] (Pet. App. 46a) (“If Fields had removed the screws from the storm window, he did it in the dark, at night, with a blood alcohol content greater than .14, after an evening of smoking marijuana and, the evidence suggests, ingesting PCP.”); (*id.*) (noting difference between screws at scene (*i.e.*, painted, Phillips head) and other considerations (*e.g.,* window height, screw tension, or fasteners)).

Andrew. Mr. Fields' life is at stake, and the Sixth Circuit's ruling should not be allowed to stand. Moreover, because no physical evidence besides presence connected Mr. Fields to the crime and another person confessed to the murder, the jury's abdication of its role to reach a verdict based only on evidence developed at trial was even more prejudicial.[3] *See Brecht v. Abrahamson*, 507 U.S. 619, 633 (1993) (describing historical view of habeas corpus "as an extraordinary remedy, a bulwark against convictions that violate fundamental fairness") (cleaned up). It would be "blinking reality" to conclude otherwise. *Cf. Turner*, 379 U.S. at 473 (observing that it would be "blinking reality" not to recognize extreme prejudice from out-of-court relationship).

[3] The Sixth Circuit panel summarized the case, including Mr. Fields' intoxication and so-called "confessions" that were untrue and forensically disproved, (Pet. App. 58a–60a), as well as the prosecution's emphasis that Mr. Fields accessed the victim's house by unscrewing a window with the knife admitted into evidence (found in Mr. Fields' pocket), even though the paint on the knife did not match the paint on the screws and Mr. Fields' fingerprints weren't found on the storm window. (*Id.* at 66a–69a); *see also* (*id.* at 10a). *Cf. House v. Bell*, 547 U.S. 518, 540 (2006) (explaining significance of new evidence through prosecution's trial theory).

ARGUMENT

I. The Sixth Circuit Misunderstood the Inquiry for Determining "Clearly Established Federal Law."

The Sixth Circuit adopted an overly narrow inquiry for determining what constitutes "clearly established federal law," contrary to this Court's established interpretation of 28 U.S.C. § 2254(d)(1). This Court's intervention is necessary to course-correct the Sixth Circuit's improperly narrow inquiry and prevent its holding from foreclosing federal review and relief in other cases.

In *Williams v. Taylor*, 529 U.S. 362 (2000), the Court interpreted the meaning of "clearly established Federal law, as determined by the Supreme Court of the United States" for purposes of AEDPA. The statutory phrase is understood to "refer[] to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *Id.* at 412. "Holding," for purposes of AEDPA does not mean the case-specific "conclusion" reached in a prior decision. "AEDPA does not 'require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied.'" *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007) (citation omitted); *see also Williams*, 529 U.S. at 391 (noting *Strickland* "clearly established Federal law" requiring case-by-case examination). Instead, a "holding" is the governing "legal principle or principles" established by this Court. *See Lockyer*, 538 U.S. at 71–72 (citing *Williams*, 529 U.S. at 405, 413); *see also Wiggins v. Smith*, 539 U.S. 510, 521–22 (2003) (concluding *Strickland* covers duty of mitigation investigation).

Governing legal principles may be sufficiently clear for purposes of Section 2254(d)(1) "even when they are expressed in terms of a generalized standard rather than as a bright-line rule." *Williams*, 529 U.S. at 382. "When this Court relies on a legal rule or principle to decide a case, that principle is a 'holding' of the Court for purposes of AEDPA." *Andrew*, 145 S. Ct. at 81 (citing *Lockyer*, 538 U. S. at 71–72); *Andrew*, 145 S. Ct. at 81 n.3 (referencing Court's continued reliance on "fundamental fairness principle" articulated in due process case). Moreover, a principle can be "clearly established" even when "it arises out of a thicket of jurisprudence and lacks precise contours." *Id.* at 82 (discussing Eighth Amendment) (cleaned up). *Cf. Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004) (*per curiam*) (describing range of application for specific and general rules).

In *Andrew*, this Court concluded that the Tenth Circuit was mistaken when it "thought itself constrained by AEDPA" to limit a prior decision—*Payne v. Tennessee*, 501 U.S. 808 (1991)—"to its facts." *Andrew*, 145 S. Ct. at 82. The Court acknowledged that it "ha[d] not previously relied on *Payne* to invalidate a conviction for improperly admitted prejudicial evidence," but concluded that (1) the principle that unduly prejudicial evidence can render a trial fundamentally unfair constituted a holding in *Payne*; and (2) that "holding" constituted "clearly established law" for purposes of AEDPA, despite *Payne*'s more case-specific holding about victim-impact evidence. *Id.* at 78, 81–82. Because "certain principles are fundamental enough," "when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." *Id.* at 82 (citation omitted). The petitioner was entitled to relief because

she did not "rely on an interpretation or extension of this Court's cases but on a principle this Court itself has relied on over the course of decades." *Id.* at 83.

The Sixth Circuit *en banc* majority did not approach AEDPA's "clearly established federal law" inquiry as directed by this Court in *Williams* (and confirmed by *Andrew*). Rather, the court said that petitioners cannot "rais[e] the 'level of generality'" and "refram[e]" the Court's "narrow" holdings as broad rulings." (Pet. App. 14a–15a) (citing *Woods v. Donald*, 575 U.S. 312 (2015) (*per curiam*);[4] *Lopez v. Smith*, 574 U.S. 1 (2014) (*per curiam*);[5] *Nevada v. Jackson*, 569 U.S. 505 (2013) (*per curiam*)).[6] By comparison, the dissenting *en banc* judges emphasized that courts cannot "whittle general principles into overly specific rules," thereby narrowing a clearly established right. (Pet. App. 44a–45a); *see also Marshall v. Rodgers*, 569 U.S. 58, 62 (2013) (*per curiam*) ("lack of a Supreme Court decision on nearly identical facts does not by

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[4] The Sixth Circuit misapplied the *per se* rule of prejudice in *United States* v. *Cronic*, 466 U.S. 648 (1984), and "framed the issue at too high a level of generality," which obscured that "none of [the Court's] holdings address[ed]" the circumstances presented in *Woods*, not that *Cronic* is not "clearly established law." *Woods*, 575 U.S. at 317.

[5] The Ninth Circuit erroneously relied on its own precedent to conclude a constitutional principle was "clearly established." *Lopez*, 574 U.S. at 5–7 (concluding "adequate notice of the charges" too abstract to require notice of liability theory).

[6] The Ninth Circuit seemingly overlooked limitations on defendants' right to present a complete defense, and no cases "suggest, much less hold" or clearly establish a "case-by-case balancing" of interests. *Jackson*, 569 U.S. at 509–12 (explaining Confrontation Clause cases prevent restriction of cross-examination, not introduction of extrinsic evidence).

itself mean that there is no clearly established federal law, since 'a general standard' from this Court's cases can supply such law").

The Sixth Circuit's approach takes an unduly narrow view of what can constitute "clearly established Federal law." For example, in one of the cases the Sixth Circuit relied on to deny Mr. Fields review, this Court faulted the Ninth Circuit for framing precedents at a "high level of generality" and thereby "elid[ing] the *distinction* between cross-examination and extrinsic evidence." *Jackson*, 569 U.S. at 512 (emphasis added). Here, rather than identify a "distinction," the Sixth Circuit too closely tethered the constitutional question to the factual scenario, not the broader legal principle: "Fields cites not a single Supreme Court case that has ever 'addressed' the propriety of jurors experimenting with evidence during deliberations—let alone one that has found these experiments unconstitutional." (Pet. App. 15a); *see also* (*id.* at 19a) ("He identifies no specific due-process precedent on jury experiments."). The court then distinguished the cases cited by Petitioner on their *facts*. *See* (*id.* at 16a–18a) (describing *Parker v. Gladden*, 385 U.S. 363 (1966), as "a decision about a bailiff's out-of-court statements"); *Irvin*, 366 U.S. 717, as holding that "biased jurors violated the defendant's right to an 'impartial' jury"); and *Turner*, 379 U.S. 466, as holding "that the jury's association with key prosecution witnesses violated the jury-trial guarantee"). The principles relied upon to reach those conclusions are broader than the Sixth Circuit appreciated, and they may be applied to non-identical factual scenarios.

The Sixth Circuit's opinion does not acknowledge that when this Court articulates principles and then relies on them to reach conclusions (as it did in *Irvin*, *Turner*, and *Parker*), the principles are "holdings" for purposes of AEDPA. *See Andrew*, 145 S. Ct. at 81. Perhaps because of this, the Sixth Circuit characterizes "holdings" so narrowly: "that the Confrontation Clause bars a bailiff from telling jurors that the defendant is guilty; that the jury-trial right bars individuals from sitting on a jury if they have already decided that the defendant is guilty; and that this right bars jurors from intimately associating with prosecution witnesses." (Pet. App. 20a) (citations omitted). Contrary to the Sixth Circuit's view, Mr. Fields did not "treat[] as clearly established law a 'general proposition' that originates with a few quotations from far-afield decisions." (*Id.*). The so-called "quotations" are principles upon which this Court relied when reaching its case-specific conclusions, thereby constituting AEDPA "holdings." Applying the correct level of generality, it is a well-established legal principle that a conviction cannot rest on evidence that was not developed in a public courtroom with the full judicial protections of the defendant's constitutional trial rights. The opinions in *Turner*, *Irvin*, and *Parker* explained how the Court reached each case-specific conclusion through the lens of this principle. *See Turner*, 379 U.S. at 473 ("What happened in this case operated to subvert these basic guarantees of trial by jury.… [and] may well have made these courtroom proceedings little more than a hollow formality."); *Irvin*, 366 U.S. at 723, 727 (suggesting sufficient if juror can "lay aside his impression or opinion and render a verdict based on the evidence presented in court" but based on factual

record "difficult to say that each could exclude this preconception of guilt from his deliberations"); *Parker*, 385 U.S. at 364 ("Here there is dispute neither as to what the bailiff, an officer of the State, said nor that when he said it he was not subjected to confrontation, cross-examination or other safeguards guaranteed to the petitioner.").

It remains true that, even if the Court has not had the occasion to explicitly say so in a specific context, jury experiments with extrinsic evidence are unconstitutional, in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments and criminal defendants' fair trial rights embedded in the Sixth Amendment. *See Taylor* v. *Kentucky*, 436 U.S. 478, 485 n.13, 490 (1978) (noting "cognate requirements of finding guilt only on the basis of the evidence" and holding refusal to give petitioner's requested instruction on presumption of innocence resulted in violation of right to fair trial as guaranteed by Due Process Clause).

Before turning to the specific legal principles and holdings at issue in this case, it is worth noting that the Sixth Circuit had the benefit of *Williams* and *Lockyer* when it denied Mr. Fields "relief under AEDPA." *See* (Pet. App. 39a). More tellingly, the court also had the benefit of *Andrew* when a majority of its members refused to revisit the decision in this case. Because the Sixth Circuit did not heed the lessons of *Andrew*, a writ of certiorari should be issued to require the Sixth Circuit to conform its reasoning to this Court's rulings.

II. The Sixth Circuit Misapprehended the "Clearly Established Federal Law" Set Out in *Turner v. Louisiana*, 379 U.S. 466 (1965).

Review is appropriate and warranted to correct the Sixth Circuit's misapprehension or denial of the "clearly established" federal law set out in *Turner*, 379 U.S. 466. The Due Process Clauses of the Fifth and Fourteenth Amendments and the Sixth Amendment to the U.S. Constitution prevent juries from relying on extrinsic evidence to reach their verdicts. This principle was "clearly established" by several of this Court's decisions, including *Irvin*, 366 U.S. 717, *Turner*, 379 U.S. 466, and *Parker*, 385 U.S. 363, all well before the relevant state-court decision in Mr. Fields' case. In fact, the holdings in these cases relied on and emerged from even older cases applying the fundamental principle that verdicts cannot rest on out-of-court evidence. *See Turner*, 379 U.S. at 471–72.

It remains true, "[i]n the constitutional sense," that evidence must be developed "at the trial" to maintain the integrity of the fact-finding process in criminal cases. *E.g.*, *Gamache v. California*, 562 U.S. 1083, 1083 (2010) (denial of certiorari from decision relying on *Turner*). Of course, the principle that guilt must be established in the courtroom should apply even more stringently in capital cases. *Cf. Deck v. Missouri*, 544 U.S. 622, 632 (2005) ("'acute need' for reliable decisionmaking when the death penalty is at issue"); 2 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure*, § 30.1 (7th ed. 2025) (noting harmless error standard deemed applicable in federal habeas proceedings originated from non-capital case). As described below, review should be granted because the Sixth Circuit's decision

misapprehends—and calls into question—this "clearly established federal law." It is of no significance, for purposes of AEDPA's inquiry, that the principle relied upon by Mr. Fields arises from an arguable "thicket" of cases. *See Andrew*, 145 S. Ct. at 82 (citing *Lockyer*, 538 U.S. at 72). A brief discussion of these cases reveals their inter-relationship and reliance upon long-established principles to reach their conclusions.

First, in *Irvin v. Dowd*, the Court concluded that a conviction and death sentence should be vacated because they were obtained in violation of the Fourteenth Amendment's due process protections. 366 U.S. 717, 718–19 (1961). More specifically, pre-trial publicity infected the community with prejudice against the defendant before his trial began, which deprived him of a fair trial by impartial jurors. *Id.* at 718. Looking at the "concepts of individual liberty" in the Western World, which developed from England with the "priceless" safeguard of a trial by jury, the Court confirmed that a jury's verdict "must be based upon the evidence developed at the trial," regardless of the "heinousness" of the crime or "apparent guilt" of the defendant. *Id.* at 721–22. Indeed, Aaron Burr's treason trial was cited as an early example of these principles' recognition. *Id.* at 722.

Although *Irvin* was focused on the constitutional limits for pre-trial publicity, the Court relied on a long line of authority supporting the greater principle that convictions must rest on public proof. *See id.* at 722 (citing *In re Oliver*, 333 U.S. 257 (1948) [involving "one-man grand jury" and exclusion of public from questioning by judge who convicted defendant "in secret"]; *Tumey v. Ohio*, 273 U.S. 510 (1927) [concluding due process does not permit trial by judge

with direct, pecuniary interest in conviction]; *In re Murchison*, 349 U.S. 133 (1955) ["judge-grand jury" violation of due process because fair trial in fair tribunal is basic requirement and "our system of law has always endeavored to prevent even the probability of unfairness"]; *Thompson v. Louisville*, 362 U.S. 199 (1960) [punishment for loitering violated due process where no evidence supported conviction]).

Following *Irvin*, the Court addressed the same "basic question" in *Turner v. Louisiana*, which was framed as "the nature of the jury trial which the Fourteenth Amendment commands when trial by jury is what the State has purported to accord." 379 U.S. 466, 471 (1965). Expressly recognizing that *Irvin* involved impairments to the defendant's fair trial rights that occurred pre-trial whereas the impairments in *Turner* occurred throughout the trial proceedings, the Court said that *Irvin*'s principles nonetheless controlled. *See id.* In addition, *Turner* further explained why evidence must be developed at trial: "The requirement that a jury's verdict 'must be based upon the evidence developed at the trial' goes to the *fundamental integrity* of all that is embraced in the constitutional concept of trial by jury." *Id.* at 472 (emphasis added).

Consequently, "[i]n the constitutional sense," this means evidence "*shall* come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Id.* at 472–73 (emphasis added). When the Court looked at the "potentialities" of outside influence on the jurors' decision to send the petitioner "to his death" in *Turner*, it found a violation of these "basic principles," even

though there was no conclusive proof of prejudice. *Id.* at 473; *see also id.* ("[E]ven if it could be assumed that the deputies never did discuss the case directly with any members of the jury, it would be blinking reality not to recognize the extreme prejudice inherent in this continual association throughout the trial between the jurors and these two key witnesses for the prosecution."). Rather, the petitioner's "fate depended upon how much confidence the jury placed in these two witnesses" and how much credibility to give them; even though they were cross-examined, "the potentialities of what went on outside the courtroom during the three days of the trial may well have made these courtroom proceedings little more than a hollow formality." *Id.* at 474, 473.

Similarly, in *Parker v. Gladden*, the Court relied on *Irvin* and *Turner* to conclude that a bailiff's out-of-court statements to the jury violated the Sixth Amendment's right to "trial, by an impartial jury…[and] be confronted with the witnesses against him," made applicable through the Due Process Clause of the Fourteenth Amendment. 385 U.S. 363, 364–65 (1966) (*per curiam*). As in *Turner*, the Court found the likelihood of prejudice enough to violate due process: "[t]he unauthorized conduct of the bailiff 'involves such a probability that prejudice will result that it is deemed inherently lacking in due process[.]'" *Id.* at 365 (quoting *Estes* v. *Texas*, 381 U.S. 532, 542–543 (1965)).

Turner is consistent with the historical development of the roles of courts and juries, as recognized by this Court. Structurally, the "very purpose of a court system" is "to adjudicate controversies, both criminal and civil, in the calmness

and solemnity of the courtroom according to legal procedures." *Sheppard v. Maxwell*, 384 U.S. 333, 350–51 (1966) (quotations omitted). With respect to the jury, "[a]mong these 'legal procedures' is the requirement that the jury's verdict be based on evidence received in open court, not from outside sources." *Id.* (concluding defendant did not receive fair trial consistent with due process because of pretrial publicity, publicity occurring throughout trial that deprived "judicial serenity and calm to which [defendant] was entitled," and publicity about material "never heard from the witness stand" but which made its way to the jury). Evidence must only be received in open court because jurors are not supposed to be investigators. That was not always so.

Jurors were once prized for having information and investigating facts. In England, "In an age of tiny, intensely interdependent agricultural communities, jurors were drawn from the neighborhood of the contested events." John H. Langbein, *Historical Foundations of the Law of Evidence: A View from the Ryder Sources,* 96 Colum. L. Rev. 1168, 1170 (1996). At that time, the local jury was "self-informing" and hopefully "contain[ed] witness-like persons who would know the facts, or if not…be well positioned to investigate the facts on their own." *Id.* "Toward the end of the Middle Ages the trial jury underwent its epochal transformation from active neighborhood investigators to passive triers." *Id.* at 1170–71. Each "group of citizens" was "no longer chosen for their knowledge of the events, but rather chosen in the expectation that they would be ignorant of the events." *Id.* at 1171.

Jurors became—and remain—passive factfinders. "From a period in which jurors were required, or at least presumed, to know the facts of their own knowledge, we move step by step to a period in which they were supposed to obtain their knowledge only from evidence produced in open court." William W. Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 Mich. L. Rev. 59, 60 (1944). "By 1764 Lord Mansfield was able to say: 'A juror should be as white Paper, and know neither Plaintiff nor Defendant, but judge the Issue merely as an abstract Proposition, upon the Evidence produced before him.'" *Id.* at 60–61. Ultimately, the American Constitution made fair trials dependent upon impartial juries. *See generally Ross v. Oklahoma*, 487 U.S. 81, 85 (1988) ("It is well settled that the Sixth and Fourteenth Amendments guarantee a defendant on trial for his life the right to an impartial jury."). The impartial jury standard requires verdicts based only upon the evidence presented in court.

The principles set out in *Turner* requiring in-court evidence neatly apply to jury experiments involving extrinsic evidence, even if that scenario has been left unstated as among the unspecified "other circumstances" in which out-of-court evidence violates fair trial rights guaranteed through the Due Process Clauses. *See Taylor*, 436 U.S. at 485 ("[O]ne accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, *or other circumstances* not adduced as proof at trial.") (emphasis added).

For example, in *Gamache v. California*, four Justices wrote a statement to explain their concurrence in the denial of a petition for writ of certiorari. 562 U.S. 1083 (2010). As set forth in the statement, after a jury convicted the petitioner of first-degree murder and sentenced him to death, his counsel and the trial court learned that during the jury's deliberations, jurors repeatedly watched a video of the petitioner and his codefendants in which he "confessed to the crime in graphic terms." *Id.* at 1083. Critically, the video was inadvertently given to them because it had not been admitted into evidence. *Id.* On appeal, the California Supreme Court concluded that the jury's access to the video was "indisputably error," citing *Turner* and quoting its key passage about the fundamental integrity of trials requiring verdicts based on evidence "developed at the trial." *Id.* This Court did not question the applicability of *Turner* and, in fact, the concurring justices added a more complete recitation of the principle from *Turner*, linking the constitutional requirement that evidence be developed at trial to the "full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Id.*[7]

Whether this clearly established law applies to Mr. Fields does not end the AEDPA analysis about whether relief is due. However, the Sixth Circuit did not consider the second prong of § 2254(d)(1) because it did not find clearly established federal law had been

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[7] The non-outcome-determinative issue for the concurring justices was that California mis-articulated or mis-applied the harmless-error standard from *Chapman v. California*, 386 U.S. 18 (1967). *Id.* at 1084. *Cf.* (Pet. App. 48a) (indicating Kentucky misapplied *Champman*).

implicated by the jury's experiment. A separate inquiry under AEDPA asks whether clearly established federal law was "contrary to, or involved an unreasonable application of," that clearly established federal law. *See Lockyer*, 538 U.S. at 70–71. Here, the Sixth Circuit did not reach that step because it first concluded that Mr. Fields did not identify clearly established federal law. *See* (Pet. App. 19a) ("[W]e need not take a position on how these three constitutional rights should apply to Fields's jury-experiment claim ….[W]e need only say that 'no Supreme Court precedent establishes that jury experiments violate' any of the rights."). According to a majority of the Sixth Circuit sitting *en banc*, Mr. Fields did "not explain why these decisions [*Parker*, *Irvin*, and *Turner*] about the Sixth Amendment right against jury *bias* 'clearly' apply to the jury *experiment* in this case" and "fails[ed] to show that any of these due-process decisions 'clearly' apply to the jury experiment in his case." (Pet. App. 18a, 19a).

A majority of the Sixth Circuit also reasoned that Mr. Fields is not entitled to relief based on an apparent misunderstanding of defendants' confrontation rights. To be sure, the Confrontation Clause, as a bundled trial right, prevents "testimonial hearsay." *Smith*, 602 U.S. at 784. However, it is part of the larger principle and structural mechanisms to avoid out-of-court evidence from tainting verdicts. "In operation," the Clause protects defendants' cross-examination right by limiting prosecutors' ability "to introduce statements made by people not in the courtroom." *Id.* at 783–84. Out-of-court statements were previously admissible if they "bore 'adequate indicia of reliability,'" but the Court "changed course" decades ago "to better reflect original

understandings." *Id.* at 784. Consistent with original understandings, the Clause is not merely concerned with oral statements. It applies to documents with an "evidentiary purpose," and—as is particularly relevant to the jury's experiment in this case—this Court has rejected attempts to apply different rules to "so-called 'neutral, scientific testing,'" given that manipulation and mistake can occur during forensic analysis, which can be probed during cross-examination. *Id.* at 785–86 (citation omitted).

Returning to the interconnected rights protected by the "clearly established" law at issue: The holding exemplified in *Turner* is no less clearly established than more discrete holdings of this Court because it arises from a "thicket" of cases. *See Lockyer*, 538 U.S. at 72. A legal principle may be "clearly established Federal law" when it emerges from a long line of authority. *See Williams*, 529 U.S. at 412 ("[W]hatever would qualify as an old rule under our [*Teague v. Lane*, 489 U.S. 288 (1989)] jurisprudence will constitute 'clearly established Federal law…' under § 2254(d)(1) [with restricted source]."); *Stringer v. Black*, 503 U.S. 222 (1992) (holding "new rule" for *Teague* not announced when "clear principle emerges not from any single case…but from [a] long line of authority"). Thus, the Court could summarily vacate and remand this case because the Sixth Circuit's decision conflicts with "clearly established law;" if it does not, it should grant review and order the Sixth Circuit to address the second step of AEDPA.

CONCLUSION

This Court should grant Mr. Fields' petition for certiorari because the Sixth Circuit not only failed to apply clearly established federal law but questioned whether this Court has held that due process, fair trial, and confrontation clause rights are predicated on a judicial system in which evidence must be developed at trial—in public and subjected to counseled scrutiny.

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Dated: SEPTEMBER 5, 2025

APPENDIX

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APPENDIX A

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